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6 Attorneys for Defendant
 7 Liberty Mutual Insurance Company

8 **UNITED STATES DISTRICT COURT**
 9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

11 PACIFIC BEND, INC., a California
 12 corporation,

13 Plaintiffs,

14 v.

15 WEST AMERICAN INSURANCE
 16 COMPANY, a Massachusetts
 corporation; and DOES 1- 50,

17 Defendants.
 18

Case No. 5:22-cv-01233 SSS (KKx)

(Hon. KENLY KIYA KATO)
 United States Magistrate Judge

**STIPULATED PROTECTIVE
 ORDER**

20 **I. PURPOSES AND LIMITATIONS**

21 A. Discovery in this action is likely to involve production of confidential,
 22 proprietary, or private information for which special protection from public
 23 disclosure and from use for any purpose other than prosecuting this litigation may
 24 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 25 enter the following Stipulated Protective Order. The parties acknowledge that this
 26 Order does not confer blanket protections on all disclosures or responses to
 27 discovery and that the protection it affords from public disclosure and use extends
 28 only to the limited information or items that are entitled to confidential treatment

1 under the applicable legal principles. The parties further acknowledge, as set forth
 2 in Section XIII(C), below, that this Stipulated Protective Order does not entitle
 3 them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
 4 procedures that must be followed and the standards that will be applied when a
 5 party seeks permission from the Court to file material under seal.

6 **II. GOOD CAUSE STATEMENT**

7 A. This action is likely to involve trade secrets, customer and pricing lists
 8 and other valuable research, development, commercial, financial, technical and/or
 9 proprietary information for which special protection from public disclosure and
 10 from use for any purpose other than prosecution of this action is warranted. Such
 11 confidential and proprietary materials and information consist of, among other
 12 things, confidential business or financial information, information regarding
 13 confidential business practices, or other confidential research, development, or
 14 commercial information, information otherwise generally unavailable to the public,
 15 or which may be privileged or otherwise protected from disclosure under state or
 16 federal statutes, court rules, case decisions, or common law. Accordingly, to
 17 expedite the flow of information, to facilitate the prompt resolution of disputes over
 18 confidentiality of discovery materials, to adequately protect information the parties
 19 are entitled to keep confidential, to ensure that the parties are permitted reasonable
 20 necessary uses of such material in preparation for and in the conduct of trial, to
 21 address their handling at the end of the litigation, and serve the ends of justice, a
 22 protective order for such information is justified in this matter. It is the intent of the
 23 parties that information will not be designated as confidential for tactical reasons
 24 and that nothing be so designated without a good faith belief that it has been
 25 maintained in a confidential, non-public manner, and there is good cause why it
 26 should not be part of the public record of this case.

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III. DEFINITIONS

A. Action: This pending federal lawsuit.

B. Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

C. “CONFIDENTIAL” Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

D. Counsel: Outside Counsel of Record and House Counsel, as well as their support staff.

E. Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

F. Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

G. Expert: A person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

H. House Counsel: Attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

I. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

J. Outside Counsel of Record: Attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and

1 have appeared in this Action on behalf of that party or are affiliated with a law firm
 2 which has appeared on behalf of that party, and includes support staff.

3 K. Party: Any party to this Action, including all of its officers, directors,
 4 employees, consultants, retained experts, and Outside Counsel of Record (and their
 5 support staffs).

6 L. Producing Party: A Party or Non-Party that produces Disclosure or
 7 Discovery Material in this Action.

8 M. Professional Vendors: Persons or entities that provide litigation
 9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 11 and their employees and subcontractors.

12 N. Protected Material: Any Disclosure or Discovery Material that is
 13 designated as “CONFIDENTIAL.”

14 O. Receiving Party: A Party that receives Disclosure or Discovery
 15 Material from a Producing Party.

16 **IV. SCOPE**

17 A. The protections conferred by this Stipulation and Order cover not only
 18 Protected Material (as defined above), but also (1) any information copied or
 19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 20 compilations of Protected Material; and (3) any testimony, conversations, or
 21 presentations by Parties or their Counsel that might reveal Protected Material.

22 B. Any use of Protected Material at trial shall be governed by the orders
 23 of the trial judge. This Order does not govern the use of Protected Material at trial.

24 **V. DURATION**

25 A. Even after final disposition of this litigation, the confidentiality
 26 obligations imposed by this Order shall remain in effect until a Designating Party
 27 agrees otherwise in writing or a court order otherwise directs. Final disposition
 28 shall be deemed to be the later of (1) dismissal of all claims and defenses in this

1 Action, with or without prejudice; and (2) final judgment herein after the
2 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
3 this Action, including the time limits for filing any motions or applications for
4 extension of time pursuant to applicable law.

5 **VI. DESIGNATING PROTECTED MATERIAL**

6 **A. Exercise of Restraint and Care in Designating Material for Protection**

7 1. Each Party or Non-Party that designates information or items for
8 protection under this Order must take care to limit any such designation to
9 specific material that qualifies under the appropriate standards. The
10 Designating Party must designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify so that
12 other portions of the material, documents, items, or communications for
13 which protection is not warranted are not swept unjustifiably within the
14 ambit of this Order.

15 2. Mass, indiscriminate, or routinized designations are prohibited.
16 Designations that are shown to be clearly unjustified or that have been made
17 for an improper purpose (e.g., to unnecessarily encumber the case
18 development process or to impose unnecessary expenses and burdens on
19 other parties) may expose the Designating Party to sanctions.

20 3. If it comes to a Designating Party's attention that information or
21 items that it designated for protection do not qualify for protection, that
22 Designating Party must promptly notify all other Parties that it is
23 withdrawing the inapplicable designation.

24 **B. Manner and Timing of Designations**

25 1. Except as otherwise provided in this Order (*see, e.g.*, Section
26 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or
27 Discovery Material that qualifies for protection under this Order must be
28 clearly so designated before the material is disclosed or produced.

1 2. Designation in conformity with this Order requires the
2 following:

3 a. For information in documentary form (e.g., paper or
4 electronic documents, but excluding transcripts of depositions or other
5 pretrial or trial proceedings), that the Producing Party affix at a
6 minimum, the legend “CONFIDENTIAL” (hereinafter
7 “CONFIDENTIAL legend”), to each page that contains protected
8 material. If only a portion or portions of the material on a page
9 qualifies for protection, the Producing Party also must clearly identify
10 the protected portion(s) (e.g., by making appropriate markings in the
11 margins).

12 b. A Party or Non-Party that makes original documents
13 available for inspection need not designate them for protection until
14 after the inspecting Party has indicated which documents it would like
15 copied and produced. During the inspection and before the
16 designation, all of the material made available for inspection shall be
17 deemed “CONFIDENTIAL.” After the inspecting Party has identified
18 the documents it wants copied and produced, the Producing Party must
19 determine which documents, or portions thereof, qualify for protection
20 under this Order. Then, before producing the specified documents, the
21 Producing Party must affix the “CONFIDENTIAL legend” to each
22 page that contains Protected Material. If only a portion or portions of
23 the material on a page qualifies for protection, the Producing Party
24 also must clearly identify the protected portion(s) (e.g., by making
25 appropriate markings in the margins).

26 c. For testimony given in depositions, that the Designating
27 Party identify the Disclosure or Discovery Material on the record,
28 before the close of the deposition all protected testimony.

d. For information produced in form other than document and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

C. Inadvertent Failure to Designate

1. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS

A. Timing of Challenges

1. Any party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

B. Meet and Confer

1. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

C. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party’s designation until the Court rules on the challenge.

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VIII. ACCESS TO AND USE OF PROTECTED MATERIAL

A. Basic Principles

1. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section XIV below.

2. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

B. Disclosure of “CONFIDENTIAL” Information or Items

1. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

- a. The Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- b. The officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- c. Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- d. The Court and its personnel;

- e. Court reporters and their staff;
- f. Professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to be Bound” attached as Exhibit A hereto;
- g. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
- h. During their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound;” and (ii) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and
- i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

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**IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information

1 produced by Non-Parties in connection with this litigation is protected by the
2 remedies and relief provided by this Order. Nothing in these provisions should be
3 construed as prohibiting a Non-Party from seeking additional protections.

4 B. In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is
6 subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:

- 8 1. Promptly notify in writing the Requesting Party and the Non-
9 Party that some or all of the information requested is subject to a
10 confidentiality agreement with a Non-Party;
- 11 2. Promptly provide the Non-Party with a copy of the Stipulated
12 Protective Order in this Action, the relevant discovery request(s), and a
13 reasonably specific description of the information requested; and
- 14 3. Make the information requested available for inspection by the
15 Non-Party, if requested.

16 C. If the Non-Party fails to seek a protective order from this court within
17 14 days of receiving the notice and accompanying information, the Receiving Party
18 may produce the Non-Party's confidential information responsive to the discovery
19 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
20 not produce any information in its possession or control that is subject to the
21 confidentiality agreement with the Non-Party before a determination by the court.
22 Absent a court order to the contrary, the Non-Party shall bear the burden and
23 expense of seeking protection in this court of its Protected Material.

24 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not
27 authorized under this Stipulated Protective Order, the Receiving Party must
28 immediately (1) notify in writing the Designating Party of the unauthorized

disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) request such person or persons to execute the “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit A.

XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

A. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Stipulated Protective Order submitted to the Court.

XIII. MISCELLANEOUS

A. Right to Further Relief

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

C. Filing Protected Material

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

XIV. FINAL DISPOSITION

A. After the final disposition of this Action, as defined in Section V, within sixty (60) days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section V.

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1 B. Any violation of this Order may be punished by any and all
2 appropriate measures including, without limitation, contempt proceedings and/or
3 monetary sanctions.

4 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

5
6 Dated: 1/10/2023

_____*s/***JEFFREY A. COHEN**_____
JEFFREY A. COHEN
LAW OFFICE OF JEFFREY A. COHEN
Attorney for Plaintiff

9
10 Dated: 1/10/2023

_____*/s/ Kim Karelis*_____
BLAKE J. RUSSUM
KIM KARELIS
ROPERS MAJESKI PC
Attorneys for Defendant

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14 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

15
16 Dated: 1/11/2023

__________
HONORABLE KENLY KIYA KATO
United States Magistrate Judge

ROPERS
A Professional Corporation
Menlo Park

MAJESKI

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under penalty of perjury that I
 have read in its entirety and understand the Stipulated Protective Order that was
 issue by the United States District Court for the Central District of California on
 [DATE] in the case of _____ [insert formal name of the case
 and the number and initials assigned to it by the Court]. I agree to comply with and
 to be bound by all the terms of this Stipulated Protective Order and I understand
 and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this
 Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print or
 type full name] of _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____

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